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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 United States of America, ) CR 10-1834-PHX-JAT

10 Plaintiff, ) **ORDER**

11 vs. )

12 Cynthia Lynn Szlobola, )

13 Defendant. )

14 \_\_\_\_\_) )  
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16 Pending before this Court is Defendant's motion for return of seized property (Doc.  
17 27). The parties agree to the basic factual background. Specifically, a search warrant was  
18 served on Defendant's house July 16, 2010, and various documents were seized. On  
19 November 23, 2010, a complaint was filed against Defendant charging her with 2 crimes. On  
20 March 2, 2011, the Court granted the Government's motion to dismiss the entire criminal  
21 case.

22 The parties agree that *United States v. Martinson*, 809 F.2d 1364, 1369 (9<sup>th</sup> Cir. 1987)  
23 controls whether Defendant's property should be returned. The parties further agree that,  
24 once the criminal proceeding has terminated, as is the case here, a defendant is presumed to  
25 have the right to have her property returned unless the Government can show a legitimate  
26 reason to retain the property. *Id.* at 1369. More particularly, the *Martinson* court stated, "...  
27 the government must justify its continued possession of the property by demonstrating that  
28 it is contraband or subject to forfeiture." *Id.*

1       Turning to the property in question in this case, the Government agrees that it will  
2 return, “Ms. Szloboda’s business documents, title of certificates and marriage license.” Doc.  
3 28 at 4. Ms. Szloboda agrees that, for now, the U.S. Department of States has demanded the  
4 return of Ms. Szloboda and her children’s United States passports; therefore, the Government  
5 can retain possession of those 3 documents. Doc. 29 at 3. Thus, the documents in dispute  
6 are: “Ms. Szloboda’s adoption certificate, her Canadian passport, her children’s birth  
7 certificates and their Canadian passports.”

8 The government has not argued or shown that the disputed documents are contraband  
9 or subject to forfeiture. The Court finds the Government's argument that it intends to use the  
10 documents in a future immigration proceeding does not meet the Government's burden as  
11 articulated in *Martinson*. Therefore,

12       **IT IS ORDERED** that Defendant's motion for return of property (Doc. 27) is granted  
13 as to all property except Ms. Szloboda and her children's United States passports. The  
14 Government shall deliver all seized property except Ms. Szloboda and her children's United  
15 States passports to Ms. Szolboda's counsel within 10 days of the date of this Order.

16 DATED this 13<sup>th</sup> day of September, 2011.



James A. Teilborg  
United States District Judge